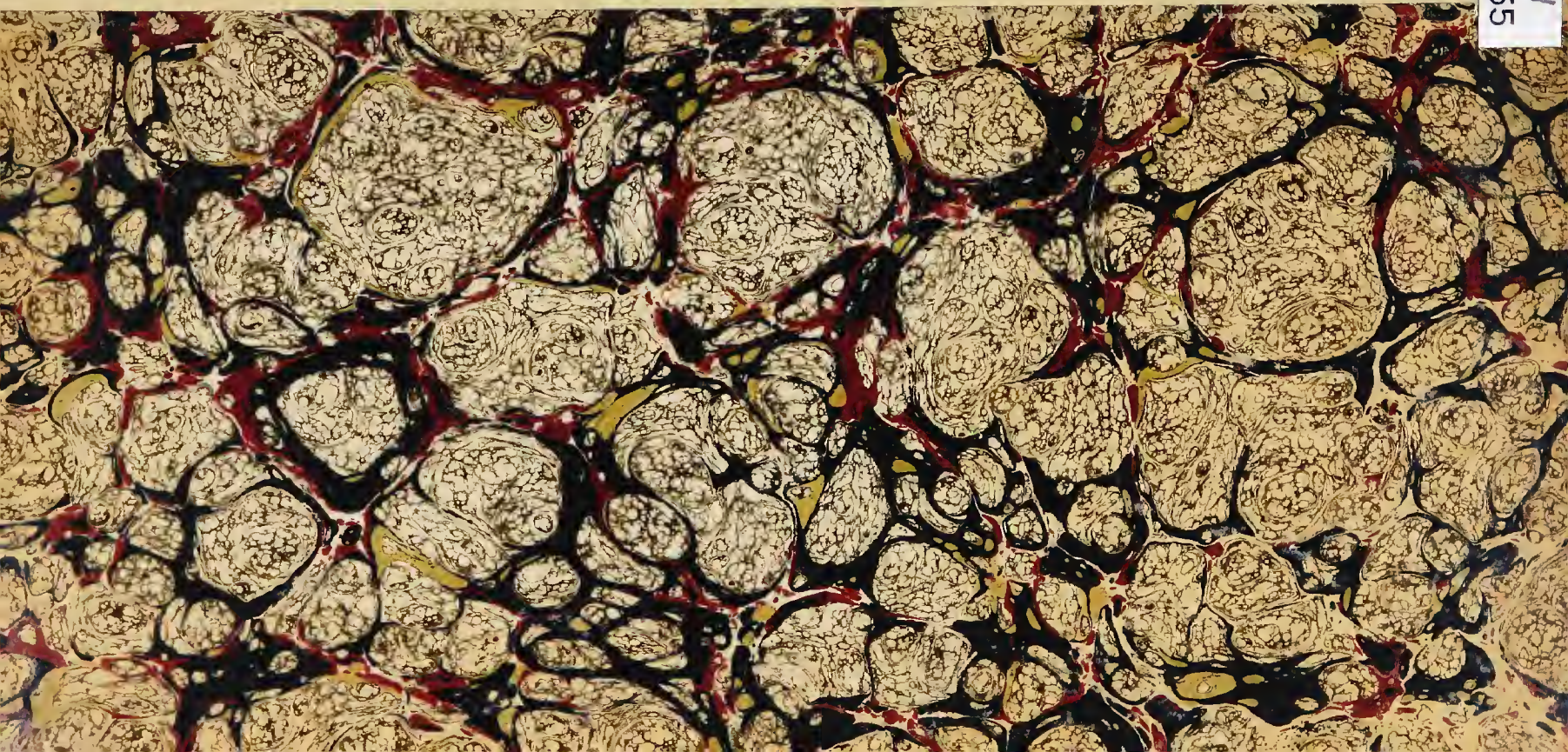

The Juridical Nature

of the relations between

Austria and Hungary

By Count Albert Apponyi

To the President
of Cornell University
with the author's compliments

Apponyi
Feb. 27th 1911

An address delivered at the Arts and Science-Congress held at St. Louis 1904.

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I INTEND to put before you a brief account of the juridical nature of our connection with Austria. In doing so I must apologize for such defects in my address as will arise from the absence of those scientific sources which I should have been glad to have consulted even on a subject so familiar to me as this one is. When I left Europe I had no idea of being honored by a call to address an audience of American jurists. I am, therefore, totally unprovided with scientific materials and must merely rely on my memory which, however, will hardly fail me on this subject in anything essential. For more than thirty years of parliamentary life it has been constantly in my mind; on no other topic have I bestowed so much time and attention. It is not my intention, however, to trouble you with my personal opinion on any controversial matter; I mean to state nothing but fact, law and what is the common creed of all my countrymen without distinction of party.

The relations between Austria and Hungary seem to be such a network of intricacies to foreign observers that very few of them care to get to the bottom of the matter. In fact, the great difficulty which is experienced in mastering this problem arises not so much from its own nature than

from the prevalence of certain false general notions and misleading comparisons. The most widespread fundamental error, the Πρωτον ψευδός as I should like to call it, consists in considering an Austrian empire which is understood to contain Hungary, as the primordial fact, and whatever is known of Hungarian independence as a sort of provincial autonomy, conceded to that "turbulent province" by the central power of the Empire. Austrian court politicians and some German writers have done their best — or rather their worst — to propagate this theory, which, however, is radically false, and being almost daily contradicted by facts, engenders hopeless confusion in the minds of all who choose to be guided by it. The truth is the exact counterpart of the abovequoted proposition; in truth, historical, legal, and material, the primordial fact is an independent kingdom of Hungary, which has allied itself for certain purposes and under certain conditions to the equally independent and distinct empire of Austria, by an act of sovereign free will, without having ever abdicated the smallest particle of its sovereignty as an independent nation, though it has consented to exercise a small part of its governmental functions through executive organs common with Austria. If the term of "concession" is to be used at all, it is Hungary who has granted some concessions, by concurring in the creation of such common organs of government; she had none to ask for, as there is no earthly power placed above her entitled to control her, and as she is possessed of all the attributes of a sovereign nation. That Austrian Empire which is supposed to include Hungary has no existence, except, in false theory and in former oppressive practice; in public law it always was and now in fact is, a nonentity. Even the term "Austro-Hungarian empire" — what the German call *Das Reich* — is a false one; and the officially used term "Austro-Hungarian Monarchy" (not a very happy because a misleading one) can be

accepted, as we shall see, only in the sense of their personal union under a monarch, physically one, but representing two distinct personalities of public law, the Emperor and the King, and of their joint action in questions of peace and war; but an objectively unified body containing both Hungary and Austria does not exist.

From the moment you have well grasped these fundamental truths, on which no Hungarian even admits discussion, it is like a falling of scales from your eyes, and everything at once becomes clear and all facts are easily accounted for. To bring them into full evidence I must trouble my hearers with some briefly sketched peculiarities of our constitutional development and with a short outline of the events which brought about and shaped our connection with Austria.

I

The Hungarian constitution is as old as the Hungarian nation herself, at least, as old as anything history knows of her. No written document exists which could be called the Hungarian constitution; no illustrious lawgiver or set of lawgivers is entitled to the praise of having framed her. She is the product of organic evolution, worked out through centuries by the genius of the nation, in uninterrupted continuity; her principles and rules must be collected from numbers of laws, customs, and precedents, reaching as far back as the eleventh century. In this respect there is an analogy between the growth of the English and of the Hungarian constitution, which is the more striking because the two racial individualities are as dissimilar as they well could be, and because there is no trace of mutual influence in their development. Even some dates happen to coincide. In 1222, seven years after the Magna Charta, appeared the Golden Bull of our King Andrew II, which, like the

older British document, laid no claim to being considered as a new enactment, but was meant to be a confirmation of old liberties. The legal distinction between constitution and law, that chief feature of American institutions, is unknown to Hungarian public law. It is within the power of our legislature to effect constitutional changes through simple legislative acts, just as she can alter a tariff or legislate on railway matters. In fact, the strongest conservatism prevails in dealing with constitutional questions, and that compound of time-hallowed prescriptions which bears the collective name of constitution is cherished with a respect nowhere to be surpassed. Some aspects of our constitutional growth will be placed now before this distinguished audience preparatory to the subject proper of my present address.

From the day when our forefathers were converted to Christianity (at the end of the tenth century) we find at the head of the nation a king with a vast prerogative, which it was necessary to invest him with, because the constant dangers threatening our country from the west as well as from the east could be faced only by a strenuous concentration of power. But that prerogative was submitted from the beginning to several checks. There was the national assembly — the gathering of all freemen — soon to evolve into national representation, the assent of which was needed to give permanent force to royal enactments, and which became an openly recognized and organized factor of legislative power in the second part of the thirteenth century. There was the semi-elective character of the crown which, though vested in a reigning dynasty, could be transferred by election to any member of that dynasty, making it advisable for the king to conciliate public opinion if he wished to insure succession to his son. There was, moreover, that remarkable clause of the Golden Bull, which remained in effect till 1686, conferring in so many words on the estates of the realm a right of resistance to the king should he

infringe their liberties. There are two laws more remarkable still, considering their date, which is 1235 and 1298, enacting the first of them that the Palatine (head of the King's Government) should be dismissed on a vote of the national assembly adverse to his administration, while the second one states that no royal ordinance should take legal effect if not signed by certain dignitaries designated by the national assembly. In what other country do we find at so early a date such full-grown elements of parliamentary government?

Medieval Hungary could reach such a high state of constitutional development for the same reason as made the power of Hungarian kings the most efficient one of that epoch, and that reason was the absence of feudalism. No doubt, infiltrations of feudalism, as prevalent throughout Europe, are to be found in our old institutions, but as an accidental intermixture only, not as their essence and chief feature. That blending of public prerogative with rights belonging to the sphere of private law, which is the essence of feudalism, never prevailed in the organization of our public powers, never broke their action on the nation as a whole. To this early prevalence of public law in the government of the country do we owe not only a superior efficiency, not detrimental to liberty, of our public powers, but in connection with it an early growth of conscious national unity, of patriotism on broad lines, at a time when tribal feeling and feudal allegiance subdivided all European nations into small units which paralyzed each other, and into a corresponding fractional mentality adverse to the very idea of state and to national feeling. But for this happy peculiarity of her old institutions Hungary could never have been able to hold her own against scheming neighbors of tenfold her material power.

In 1686 the Hungarian Crown became hereditary; henceforth, she missed the guarantee contained in free election;

but in the meantime some substitute for it had grown up in the institution of coronation and the legislative acts by which that august ceremony is attended. Old laws require the heir to the throne to get himself crowned within six months of his accession and they suspend some important part of his prerogative (we name only his participation in legislative power) till he has done so. But crowned he can be only with the assent, or to state it more correctly still, through the agency of the national representation, which puts thereon such conditions as it thinks necessary. Every coronation, then, is founded on a new agreement between king and nation, embodied in a document called "inaugural diploma" and accompanied by a solemn oath of the king to observe the terms of that document and the general enactments of the constitution. By these proceedings the fundamental principle of our institutions, the principle that every power, the prerogative of our kings included, has its source in the nation, and comes to those in whom it is vested through delegation from the nation, is constantly reasserted and held in evidence; it is the nation who crowns the king, under the sanction of God's most holy Majesty; the prerogative of the king, his very title to reign, is blended into one with popular rights and their guarantees; both together, prerogative and people's right, are designated in their joint force and sacredness by the name of "the holy Hungarian crown", of which every Hungarian citizen is a member, this membership not being a mere metaphor, but implying the great principle that there is no difference as to inviolability and sacredness between the king's exalted prerogative and the poorest subject's individual and public rights, and that there is no prerogative apart from or in opposition to the nation.

I insisted at some length on the peculiar character of the Hungarian monarchy because it contains the most distinctive feature of our constitution and may be considered as the

masterpiece of that political genius in which few nations, if any, have surpassed our people. Placed in a situation where a strong executive was essential to national safety, our forefathers had to solve the problem to make prerogative as efficient as could be for its national mission, and at the same time innocuous to liberty. And either I am totally misled by patriotic self-conceit, or that difficult problem found a better solution in Hungary than in any other country placed in similar circumstances.

Time fails me to expatiate on the development of the other constitutional powers, to show how national assemblies (originally mass meetings of all freemen) evolved into representative bodies; how these bodies grew gradually stronger and extended the sphere of their rights; how a powerful organism of county, town, and city self-government was developed on quite original principles, and became in hard times an unconquerable stronghold of national liberty. But a few words must be said as to the question: Whom do we refer to by the name of the Hungarian people? In other words: In whom were all those rights vested which formed the popular branch of the constitution?

To an American — now, even to a modern European — audience, such a question may seem preposterous. In whom, indeed, should popular rights be vested but in the whole people, including every citizen of the country? But we are considering now a medieval constitution and a political establishment founded on conquest; which means that we speak of an epoch which knew liberty only in the form of privilege and of circumstances peculiarly adverse to universal equality.

Now, and this is one of the most important facts in our history, privilege in a racial sense never existed in Hungary. When our forefathers conquered their new ehom, they found different races on its soil, and sa late as the

eighteenth century, immigration brought new racial intermixture into our country. How, then, did we deal with that mass of heterogeneous elements? National unity—just like concentration of power—was, and still is, essential to the permanence of any political establishment in that part of Europe, which has to face the first onset of all Eastern dangers; that there should exist a strong national unity on that particular spot was, and is, even a condition of safety to all occidental Europe. But how was it to be effected among a chaotic mass of racial individuality? History of conquest shows two typical ways of solving that problem. In almost all states founded in Western Europe by invaders of Teutonic origin, a new race grew out of the fusion between conqueror and conquered, the racial individuality of the latter generally prevailing. So the Franks, the Visigoths, the Longobards became Latin in France, Spain, and Italy; the Normans, Latinized in France, became Saxon after the conquest of England. Turkish conquest on the other hand, being founded on theocratic principles, does not tend to racial assimilation; it simply lays a new racial stratum on the old ones, granting the latter a sort of contemptuous toleration, but domineering over them with all the might of religious and political exclusiveness. Our forefathers adopted neither of these two courses. They kept their own race unaltered, and respected the racial individuality of the conquered as well as of later immigrants; but they absorbed them into political unity by conferring upon the deserving among them all the privileges of a Hungarian freeman, privileges which, on the other hand, were forfeited by many members of the conquering race. By these proceedings—which remind us of ancient Rome, conferring her citizen right on provincials—racial difference soon disappeared from public law, every man on our territory being submitted to the same laws, enjoying the same capacities of public life, being equally able to become an active agent in national evolu-

tion, but disabled from evolving any sort of particular racial history, being in a word tied to the whole community by every material and moral tie which, in the course of time, engenders feelings of solidarity and union. National unity, the unity of the great political Hungarian nation, was effected on the most liberal base, and towers up to our days in unconquerable height and strength above those abortive attempts to foment discord on the ground of misguided racial instinct, of which you may have heard some rumors even here, among part of our immigrants. From the beginning, then of the Christian era in our country, that is for nine hundred years, the rights of the people are vested in the whole undividable Hungarian political nation, irrespective of racial distinctions.

But class divisions and class privileges, Hungary, like all medieval Europe, has certainly known. Still, I can claim a certain kinship to democracy on behalf of our old constitution.

When medieval Hungarian public law had reached maturity, there was a class of *nobiles* — which term would be very inaccurately translated into the English word "noblemen" — I should rather call them "freemen", or "franchisemen", in whom all public rights were vested. To these the clergy, the members of some other liberal professions, and the burgesses of a great number of towns became assimilated. Access to that privileged class was easy; it numbered many thousand members, whose social status did not differ from that of the peasantry; sometimes the peasantry of whole counties became enfranchised by one single act of prerogative or of legislation. Gradually it became so numerous that the number of our franchise-men in the eighteenth century — and probably at an earlier date, too, but of this we have no statistics — was comparatively larger than the French electorate under Louis Philippe and perhaps even the English one before the great parliamentary reform of

1830.[1] Within that large body of privileged citizens, so large as to bear a distinctly popular stamp, there was no further class distinction. And this is the most characteristic fact in our old constitution; it is the fact which chiefly warrants me in calling that constitution quasi-democratic. There existed, of course, vast differences of wealth and of social influence (I suppose even modern America knows something of the kind), but legally recognised and fixed subdivisions of privilege there were none. It was only in much later time, under the Habsburg kings, that German titles were bestowed on Hungarian nobles, and that a hereditary aristocracy sprang up and began to sit in an Upper House, which was legally recognized in 1608; originally, the national representative consisted of one House only, which might not unfittingly be compared to the English Commons. And so, while in England the Lords were foremost in seizing upon some part of public power and the Commons slowly and gradually followed to the front, in Hungary, what we may call the Commons were powerful from the beginning, and no such thing as Lords existed till, at a much later date, that institution was to some extent imported from without. Where England beats us, as it beats the greatest part of our Continent, is the early growth of a free peasantry; but then she has almost wholly lost

[1] Since he delivered this address, the author has been enabled to add a few figures which make good the above statements. At the epoch of the French Revolution we find in Hungary 75.000 families (corresponding to 325.000 individuals) belonging to the privileged class, out of a total population of 6,000.000, while at the same time France numbered only 28.000 such families against a population of 26,000.000. In 1805 we find 340.000 "nobles" (or as we call them freemen) against a total population of 7,500.000; in 1848 they numbered 675.000 out of nearly 12,000.000. But to these numbers must be added the clergy (numbering by itself 16.000 voters in 1805), the members of other enfranchised liberal professions and the burghesses of privileged cities.

that most valuable class, while we have kept it in full vigor and look to it as an inexhaustible source of national strength.

The reign of privilege certainly took its mildest form in Hungary; true, it lasted longer than most in other countries. It was ultimately abolished by the glorious legislation of 1848, which has been effected through no uprising or agitation among the disfranchised people, who persisted in perfect political apathy, but through a spontaneous resolve of the privileged class itself. Class magnanimity is a feature unknown to general history; that we can show a sample of it in our annals is perhaps the proudest, certainly the purest, glory of our nation.

And here my digression to the field of general constitutional history must be stopped;[1] enough has been said to bring into evidence the peculiar nature, the originality of our institutions, and to enable my hearers to draw inferences as to the vigorous individuality of the people whose national genius has created those institutions. That such a national individuality can hardly be absorbed into an artifical political settlement, that independence is the very law of her nature, seems to be the clear result of even so much insight into the workshop of her historical evolution. Thus prepared, we can now consider the problem which is to be the subject of my present address with a clearer perception of its constitutive elements.

[1] To those readers who wish for ampler information on this matter, the author recommends Professor Ákos v. Timon's most valuable history of Hungarian law, published this year in a very good German translation. The German title of the book is *Ungarische Verfassungs- und Rechtsgeschichte* von Ákos v. Timon. (Berlin, 1904: Puttkammer und Mühlbrecht.)

II

The Austrian dynasty, the dynasty of Habsburg, was called to the Hungarian throne in 1526, after the disastrous battle of Mohács, in which the Turks annihilated the military force of Hungary. It was the epoch of Charles V, that Emperor of Germany and King of Spain who boasted that in his domains the sun never set. His brother Ferdinand was elected King of Hungary in the hope that the power of this mighty dynasty would assist us against the Turks. But not only was there no intention of melting the old Kingdom of Hungary into the Austrian domains, but the election and coronation of Ferdinand took place on the express condition that the independence of the Hungarian crown and the constitution of the realm should remain unimpaired. That condition has been accepted and sworn to by the new king; it has been confirmed by the coronation oaths of all his successors belonging to the same dynasty; whatever practical encroachments may have occurred, this legal state of things never became altered.

During the first period of the Habsburg rule in Hungary, which period extends to the year 1723, no sort of juridical tie was formed between her and the other domains of the dynasty, which, to simplify matters, we shall henceforth call by their later collective name, Austria. It was even impossible that such a tie should exist, because Hungary remained the semi-elective kingdom she had been, while those other domains were hereditary possessions. The connection was at this time a merely casual one, like that which existed for some time between England and Hanover.

Matters took a different aspect when hereditary right to the Hungarian crown was conferred on the Habsburg dynasty, first on its male lineage (1686), and afterwards on the feminine descendants, too, in 1723. This was effected

through the celebrated transaction known to history as the Pragmatic Sanction of Emperor Charles VI (Charles III as King of Hungary) which, being the basis on which our present relation to Austria rests, has to be considered here with some accuracy.

The Pragmatic Sanction consists of several instruments, diplomatic and legislative, of which the Hungarian Law I, II, and III of 1723 alone has legal value and practical importance for Hungary. In that law the legislature of the realm settled the question of succession to the Hungarian throne in accordance with King Charles III's wishes by the following enactments:

1. Hereditary right to reign as kings in Hungary is conferred to the male and female descendents of the Kings Leopold I, Joseph I, and Charles III in conformity with the law of primogeniture already in vogue in the Austrian domains, to the effect that as long as the above-mentioned lineage lasts, the same physical person must infallibly reign in both countries, Hungary and Austria, with no legal possibility of division *(inseparabiliter ar indivisibilter possidenda* are the words of the law). The other collateral branches of the Austrian house have no right to succession in Hungary, though they may be possessed of it in Austria.

2. Notwithstanding that personal union, the independence of the Hungarian crown and the old liberties of the kingdom are solemnly recognized and reasserted.

3. When the above-described lineage becomes extinct, Hungary will use again her ancient right of free election to the throne, irrespective of what Austria, or any part of Austria, may choose to do in that emergency.

4. As long as this lineage lasts and the same physical person reigns in both countries, Hungary and Austria are bound to assist each other against foreign aggression.

On analysing this fundamental transaction we must take notice of its contents and of its form.

In the contents there is nothing to take away any particle of Hungary's independence and national sovereignty. A personal tie is formed, it is true, with another country. I call it personal because it lasts only as long as a certain set of persons, a certain lineage, exists and becomes *ipso facto* severed whenever those persons disappear. But that personal tie, the identity of the ruler, does not affect the juridical independence of the country, because that identity exists only with respect to the physical person, while the personality of the King of Hungary remains quite as distinct in public law from the personality of the Austrian ruler as it had been before; as King of Hungary that monarch, physically one, is possessed of the limited prerogative granted to him by the hungarian constitution; as emperor of Austria he enjoyed at the time when the connection with Hungary was formed almost unlimited absolute power. There is no possibility of melting into one these two prerogatives so widely different in origin and character. To that personal tie, which only means that two different and distinct prerogatives are vested in the same physical person, a solemn league and covenant was added, a mutual obligation to assist each other against foreign aggression.[1] Is there anything in the nature of such a covenant which should of a necessity impair the independence of the nations who are parties to it? That, now, depends wholly on the form of the transaction, on the sources from which it derives its binding character, on the forces which insure its execution.

[1] It is generally admitted that the Pragmatic Sanction, with all its enactments has the character of a bilateral compact between the Hungarian nation and the reigning dynasty. Most authorities of public law hold it to be at the same time a compact between Hungary and Austria, the latter having been represented on its conclusion by her (then) absolute ruler. But as this is controversial matter, the author, though holding the first-mentioned opinion, did not think fit to insist upon it in the text; his argument holds good on either supposition.

Should that obligation to mutual defense have been laid upon Hungary by a power outside her own public powers and superior to them, or should there be any sort of such superior legal organization able to enforce its execution against Hungary's free will or to interpret its meaning in a way binding to her, then, indeed, Hungary would be no more a sovereign nation. But of all this there is not even a trace. Hungary entered that compact of mutual defense by an act of her sovereign will, *and its execution as well as its interpretation* — let me emphasize this point, because it absolutely settles the question — *depends entirely on her good faith and on her discretion.* Neither before, nor in, nor after the solemn transaction called "Pragmatic Sanction" will anybody be able to discover even the trace of some power superior to the public powers of Hungary, entitled to control her, able to force on her what she does not choose to accept or to do. Now this way of entering and of keeping compacts exactly answers to the idea of national sovereignty. We shall see later on that these characteristic features of our legal status suffered no alteration whatever through more recent transactions.

To give more weight to the present comments on the Pragmatic Sanction I shall quote its authentic interpretation given in a law enacted by the Hungarian legislature in 1791, after an attempt of Joseph II to subvert the constitution. In Hungary, as in England, laws of this kind, reasserting and putting into evidence national or popular rights, generally follow practical encroachments on those rights; their purpose is not to create but to declare law; to this family of declaratory laws, the most celebrated scions of which are the Magna Charta, the Bill of Rights, the Petition of Rights, to that same family belongs the law which I am about to quote:

"Law I of the year 1790—1791, Emperor and King Leopold II, Article 10.

"On the humble proposal of the estates and orders of the realm, his most holy Majesty has been pleased to recognize:

"That, though the succession of the feminine branch of the Austrian house, decreed in Hungary and her annexed parts by the Laws I and II of 1723, belongs, according to the fixed order of succession and in indivisible and inseparable possession, to the same prince whose it is in the other kingdoms and hereditary domains, situated in or out of Germany; *Hungary with her annexed parts is none the less a free and independent kingdom concerning her whole form of rule (including therein every branch of administration), which means: submitted to no other kingdom or people, but possessed of her own consistence and constitution;* therefore, she must be ruled by her hereditary and crowned kings; consequently by his most holy Majesty too, and by his successors, according to her own laws and customs, and not after the example of other provinces, as is already enacted by the Laws III, 1715; VIII and XI, 1741."

The clear and forcible language of this fundamental law requires no additional explanation. We must now only inquire into the nature of later transactions, and see how they bear on our problem.

And here we are first brought face to face with a fact which, though irrelevant in itself, has wrought much confusion, and is still a rich source of misunderstandings. I mean the assumption, in the year 1804, of the title of "Emperor of Austria" by Francis I, when the "Holy Roman Empire of German Nationality" had collapsed, Many people think that this imperial title expands over all his Majesty's domains, Hungary included, and that it represents a collective sovereignty superior to that of the Hungarian crown. The corresponding territorial idea is that of an Austrian Empire, including Hungary, Now, these conceptions are absolutely false. The new imperial title has nothing whatever to do

with Hungary, it has legal existence only with respect to those other domains which, from that date, can be properly called Austria, to the exclusion of the kingdom of Hungary. As ruler of those other domains his Majesty may call himself whatever he pleases, but in Hungary the King alone reigns, and never will the time-hallowed majesty of our old Crown be melted into the splendors of a brand new imperial diadem, never will it be controlled by any fancied superior power, Hungary never suffered mediatization, no act of her legislative points that way, and no act of prerogative can achieve it. The title of "Emperor" is simply a collective designation for the portion of sovereignty enjoyed by his Majesty in his other domains; in Hungary he is merely king; the two titles, imperial and royal, are distinct and equal in dignity; they designate (as my hearers will remember) two widely different prerogatives, the mixture of which is hardly conceivable even in juridical fiction. It is quite as absurd to think of the Emperor of Austria as ruler of Hungary as it would be absurd to fancy the King of Hungary as reigning in Austria or any part of her. To our public law the Emperor of Austria is a foreign sovereign.

The next striking fact is the above-mentioned legislation of 1848, which, by giving precise shape to parliamentary government in Hungary, and by making every act of royal prerogative dependent in its legal value on the signature of Hungarian constitutional advisers, made the distinctness and diversity of the two juridical personalities meeting in one physical person, the emperor's and the king's, and of the two prerogatives vested in that same person, evident to all eyes. From an abstract truth, often obscured by the practice of a system of personal government not very anxious to uphold it, this distinction became a living reality, no more to be ignored. The winning of such a practical guarantee to our national independence is, besides the

democratic reform which it has effected, the immortal glory of that legislation.

War, victorious at first, disastrous after the crushing intervention of Russia, came next, followed by a period of absolute oppression which lasted from 1849 till 1867. But all this belongs to the domain of mere fact; it did in no way alter the legal continuity of the principles on which our connection with Austria rests; it did not weaken in right the independence of the Hungarian kingdom, though suspending it in fact for a time. There had been times of oppression, almost as hard as this one, before; at such times Hungary, while powerless to prevail against superior material forces, had always stuck to legal continuity, waiting patiently until a turning of the tide should enable her to bring practical reality in concordance with juridical truth; but of that juridical truth she never gave up one single atom, and she always lived to see it prevail against wholesale oppression as well as against partial encroachments. 1867 was the year of one of these resurrections; at the same time, it created new rules concerning the practice of our connection with Austria, rules which, however, left the principle of that connection — the independence of Hungary as a sovereign nation — unaltered, as a rapid survey of them will show.

III

The celebrated transaction called the Compromise of 1867 is embodied in the Law XII of that year. In its first (declaratory) part this law fixes again the sense of the Pragmatic Sanction, as stated above, emphasizing its two principles: our sovereign national independence and the mutual obligation to mutual defense with Austria. Then it proceeds to state that the fact of Austria's having been endowed with a constitution which gives to her people a right of

controlling their government (as we control ours) makes some new provision necessary in those branches of administration which bear direct relation to mutual defense, and in which it is, therefore, to say the least, highly desirable that the joint action of both countries should be unfailingly secured. To that end, the two great agencies of national defense — foreign affairs and war-administration — are to a certain extent declared common affairs, but in the executive sphere only, where action originates. Legislation on them (such as assenting to international treaties, framing of laws on the conditions of military service, on recruiting, etc.) is expressly reserved to the juridically-independent action of both legislatures, which are, however, desired to do their best to agree on these matters. To provide for these common affairs a common ministry of foreign affairs and of war [1] is called into existence; the expenses of these two departments are jointly to be borne by both countries in proportion to their comparative financial power — measured until now by the results of taxation of each. Both countries have equal control over these common departments, a control which they can exert through ways direct and indirect, as we shall see later on.

The common ministry of foreign affairs implies a common diplomatic service. It is not so clear up to what point unity of the armed force is implied in common war administration. Our law mentions a Hungarian army as part of the whole army, which is to be unitedly commanded

[1] I did not mention in the text the third common ministry, that of finance, because that high-sounding title is only apt to generate confusion. In fact, the common minister of finance has nothing to do at all with finance in the sense of a financial policy; he is merely a cashier who receives the contributions of Austria and of Hungary to common expenses and hands them over to the respective common departments. It is merely accidental that the common minister of finance is now generally intrusted with the government of Bosnia and Herzegovina.

and regulated as to its inner organization by the king, in the sense of his constitutional prerogative. The somewhat oracular terms of this proviso have given birth to much controversy and to some trouble lately. But one fact towers above all controversy, namely, the fact that in public law the individuality of the Hungarian army has been expressly maintained; and this is all that need be said about the matter here, where we are considering the juridical aspect of things only.

Particular provision has been made for the annual vote on common, foreign and war, expenses and for a direct parliamentary control on the respective common ministries. Anything like a common parliamentary body being out of question, the most natural proceeding would consist in submitting these questions to both parliaments; but practical difficulties might arise if their vote should differ; how could two great parliamentary bodies residing in two different countries come to an agreement as quickly as the necessities of immediate action may sometimes require? To meet this practical difficulty select committees are annually chosen by both parliaments to the number of sixty members each, called delegations, and holding their annual meeting at the emperor and king's call alternately at Vienna and at Budapest. The delegations don't sit together; they are two separate bodies, like the mother assemblies, only more handy ones to adjust difficulties. In case of disagreement they communicate through written messages, and only when it seems impossible to settle differences through correspondence (a very rare occurrence) do they meet for a simultaneous vote, at which meeting no discussion can take place. What is then the juridical meaning of that simultaneous vote? Is it to get a joint majority out of both bodies? That would contradict the fundamental principle of the institution which is no sort of common parliament but only a channel of easier communication between the

two parliaments; the real meaning of that somewhat anomalous expedient is simply to bring face to face the two dissentient national wills and to make the more fixed one of them prevail when joint action must be secured one way or other.

The only functions of the delegations is to fix the figures of the budget of both common departments and to bring the controlling power of both parliaments over these departments into direct action. The figures as fixed by them are incorporated into the Austrian and into the Hungarian budget. The ratifying vote of the Hungarian parliament is an essential condition of legal value to their resolutions, and, though the parliaments cannot alter them, the Hungarian parliament at least has power altogether to reject any decision of the delegations when it thinks that the latter have gone beyond their constitutional competence. It must ever be borne in mind that the delegations are after all but select committees of parliament, committees endowed with some privileges, but still committees controlled and kept within their limits by the superior power of the mother assemblies.

Parliaments, the Hungarian parliament, at least, for the Austrian law gives greater pover to the Austrian delegation than our law bestows on the Hungarian one, have, as I already hinted, indirect means, besides the direct one, of controlling the common departments. Law and custom desires the administration of common affairs, though intrusted to common ministers, to remain as to its leading principles in constant agreement with the Hungarian ministry; the latter is, therefore, co-responsible for the general conduct of foreign and war affairs to the Hungarian parliament, which may give an adverse vote on any question touching those departments. Such a vote, though affecting directly the Hungarian ministry only, would most certainly have an indirect bearing on the position of the respective com-

mon minister, or on his policy. This indirect influence of our parliament puts it into still clearer evidence how the common affairs and the common executive agents are anything rather than representatives of a power higher than the public powers of Hungary; they are, on the contrary, constantly controlled by these powers and, as we shall see more clearly still, entirely dependent on them.

Several other enactments of the law XII, 1867, which express the advisability for Austria and Hungary to agree on some matters not exactly belonging to the sphere of mutual defense,[1] I pass by here, because, being entirely facultative in their execution, they can have no possible bearing on the juridical aspects of national independence. But it is now my task to analyze the institutions created in 1867, and to inquire whether they have impaired Hungary's independence as a sovereign nation, the maintenance of which we have followed out up to that memorable date.

That there is mutual dependence, in the political sense of the word, between two nations who are bound to act together in certain affairs and have created institutions to secure such identity of action, seems perfectly clear. Mutual dependence of this kind certainly exists between Hungary and Austria; we have a strong party in Hungary which objects even to this, and calls itself, on that account, the party of independence. But with this political aspect of the question I have here nothing to do. Mutual dependence between two equals depending on the free will of both does not affect their independent juridical individuality, in

[1] The most important of these enactments is one which provides for customary union to be periodically established. It is far from improbable that in a few years that union will be solved and a commercial barrier rise between Hungary and Austria. Nor will this modification of their economic relation juridically affect the connection as established by the Pragmatic Sanction and shaped out by the law of 1867.

the case of a nation this nation's sovereignty. That would be impaired only should the nation be incorporated as a part into some larger body, or controlled by some legal power superior to her own public powers. Now, is this the case of Hungary since 1867?

The question put in these terms is negatived by the very nature of the transaction which we are examining. We call it a compromise and such it is politically speaking. Hungary, before creating the Law XII, 1867, ascertained in a proper way that it would settle the difficulties pending with the dynasty and with Austria as common good sense required her to do. But as to *its binding force* this celebrated law is no treaty, like the Pragmatic Sanction, but simply a law like any other law, liable to be abolished or changed at Hungary's uncontrolled pleasure. It is immaterial for the purposes of our present investigation that we should certainly think the matter twice over before tampering with that particular law: that is the *political* aspect of the question; *legally* the whole machinery of common affairs and common ministries can be destroyed by an independent act of the Hungarian legislature, with which nobody has a right to interfere. Now I ask, how can institutions which depend in their very existence on the sovereign will of Hungary represent a power superior to her, or controlling her? They are not even a new tie between Austria and Hungary, for the simple reason that Hungary is not tied by them. Matters are left, then, exactly as they stood after the Pragmatic Sanction; an independent and sovereign Hungarian nation has entered personal union with Austria, and both countries are bound by solemn compact to assist each other against foreign aggression.[1]

[1] The author lays no particular stress on the much-debated question whether the union between Austria and Hungary is to be called a personal or a real union, because he consideres this as a question of

Though this settles the question, let us consider the common institutions in their activity, and let us inquire whether they represent, while existing some fragment at least, of an imperial establishment, of that *Reichsgedanke* which certain Austrian and German authors are striving hard to discover in them; an establishment including both Hungary and Austria, superior to their public powers and, let us say, provisionally controlling them to a certain extent. What constitutive elements of such an establishment can be found in the machinery set up by the legislation of 1867, in what does that fancied empire really consist?

It has no territory; there is a Hungarian territory and an Austrian territory; Austro-Hungarian territory there is none, as has been declared by a resolution of parliament, when dealing with an inaccurately-worded international treaty.

It has no citizens; there are Hungarian citizens and there are Austrian citizens, the two citizen's rights being not only distinct, but widely different in the legal conditions of acquiring and loosing them.

It has no legislative power; we have seen that even in common affairs legislative acts are expressly reserved to both legislatures; we have further seen that the delegations have no legislative power, and are, even in the sphere of their competence, nothing like *Reichsvertretungen,* "imperial representative assemblies", as the said authors sometimes like to call them, but simply select committees of both parliaments,

terminology rather than as one of real consequence. In concordance with Fr. Deák he calls it a personal union with an additional covenant of mutual defense, because the *principle of the union is merely personal;* it is, as we have seen, *ipso jure* solved, when a certain set of persons (the lineage entitled to succession in both countries) becomes extinct. The really important aspect of the question lies in the fundamental juridical fact that the independence and sovereignty of the kingdom of Hungary remains unimpaired in that union.

called into existence for purposes of easier communication between them, and working under their constant control. It has no judiciary; questions arising between the two countries must be settled, if agreement is impossible, by international arbitration, as was done in a boundary question two years ago.

But it seems to have, and there our opponents exult, at least an executive. What are the common ministers if not some embodiment of a common, of an imperial, executive power? I own to standing aghast at such a profundity of science. Common ministers, then, should represent a common, an imperial, executive power; now, let us overlook the queer aspect of an empire-like settlement, possessed of no other attribution, no other public power but of an executive; let us overlook the little hand-trick which must be performed imperceptibly to glide from "common", which supposes two parties at least, into "imperial", which means one; and let us simply state that even a common executive power does not exist, cannot exist, between Hungary and Austria. There are common ministers indeed, but in what constitution of the world is executive power vested in ministries? We find it everywhere among the constitutional attributes of the first magistrate, subject to more or less restrictions, but vested in him, having its real existence personified by him, ministers being merely his agents, though they may be necessary agents, agents designated by the constitution. In Hungary, executive power is vested in the king; in Austria, in the emperor; now, as we have seen, the King of Hungary and the Emperor of Austria, though meeting in one physical person, are two distinct personalities in public law, every part of their prerogative being distinct and generally different. The King of Hungary can only be invested with the executive power of Hungary, the Emperor of Austria with the executive power of Austria; no third personality of public law, no sort of

imperial first magistrateship has ever been conferred on his Majesty, nor does such a personality, I presume, exolve out of nothing by a sort of *generatio equivoca,* spontaneous growth. So there exists no person in whom such common, or imperial, executive power could possibly be vested, just as there is no source from which it could be derived, even to float in the air. What are, then, our common ministers? They are simply common agents, agents of both executive powers, Hungarian and Austrian, for those branches of government in which both executives should act together, they are ministers of the Emperor and of the King, to assist his Majesty in those acts through which he simultaneously exercises both his executive prerogatives, imperial and royal.

And let me emphasize again that the whole machinery of common affairs and common ministries must act in constant agreement with the Hungarian ministry, under the constant control (direct and indirect) of the Hungarian parliament (and Austrian, of course, too), that it can be blown up every moment by a short law enacted by the Hungarian legislature; and let me ask again, where can you find in those institutions, dependent on the public powers of Hungary in every moment of their action, in every second of their existence, even the shadow of an imperial establishment superior to Hungary, controlling her to any extent? Truly, that phantom of an "Austrian Empire", taken in the sense in which it should include Hungary, reminds me of the old German proverb about a knife without a blade, the handle of which was missing.

IV

Should I have succeeded in making all this as clear to you, gentlemen, as it seems evident to me, you will quite naturally ask me how truths so evident came to be ob-

scured and contrary impressions to be almost generally prevalent throughout the world, and you may further inquire about the bearing of such a connection between Hungary and Austria, as between two sovereign nations on the international situation of either of them separately or of both taken jointly. Of these two questions I shall try to answer the second one first.

That Hungary taken separately has a legal personality in international law stands above doubt; it simply follows from her being an independent kingdom, "not subject to any other kingdom or nation", as the above-quoted law of 1791 puts it. But since she is bound to Austria by a covenant of mutual defense, and since the law of 1867 has declared common affairs "those foreign affairs which affect the interests of both countries", meaning those which bear direct relation to national defense Hungary (as well as Austria) has for the time being disabled herself *by her own law* to act separately in international matters of that kind; she has, with respect to these matters, for the time being, renounced the separate use of her personality in international law, and must, in all cases of such nature, act jointly with Austria.[1] The permanent potentiality of that joint action,

[1] This is how the matter stands in the terms of the Law XII, 1867, But even should that law be abolished or altered and the whole machinery of common affairs and common ministries be superseded, the obligation to mutual defense founded on the Pragmatic Sanction, which is a bilateral compact, would none the less subsist so long as the present dynasty lasts, and the foreign affairs of both countries would have to be conducted with constant regard to that obligation. How this could be insured under such altered circumstances is a question of practical expediency which we need not discuss here. Some new scheme might be devised, or the guarantee contained in the physical identity of the monarch, whom both constitutions invest with an efficient prerogative in foreign affairs, might be thought sufficient for the purpose. At all events, contrary to a widespread and artificially fostered opinion, the European system of powers, would remain undisturbed.

the union of the two nations for that purpose, is called Austria-Hungary, or, since their ruler is physically one monarch, the Austro-Hungarian monarchy, though that term, as being apt to misinterpretation, is not very felicitously chosen and will probably fall into desuetude. Austria-Hungary then, as is shown by the double term itself, does not mean one empire, but the permanent union of two nations for certain international purposes. In all international affairs not belonging to the sphere of national defense (such as railway conventions, extradition treaties, copyright conventions, etc.), the international personality of Hungary not only can, but must act separately because with respect to them there is no union with Austria, and, therefore, their joint action cannot even be juridically constructed, except on the grounds of some *(ad hoc)* convention between them. In fact, some treaties belonging to this category have been concluded jointly by "Austria-Hungary", but this was done by an inadvertance which is not likely to occur again.

It may be difficult practically to draw a precise boundary line between the matters in which the international personality of Hungary acts separately, and those in which, as long as the present law remains effective, she can act only in connection with Austria; but juridically the distinction exists, and Hungary has availed herself of it in several international treaties which she has independently concluded, and even where joint action is necessary it is not the action of one empire (which, having no substance, is hardly capable of action of any sort), but the joint action of two. Being bound to such joint action in certain matters, the union of these two constitutes one great power; because what is power but potentiality of action — in our case of joint action? But it is not necessary to invest that great power with a juridical personality of its own; the fact that it represents a permanent obligation of two personalities to

act jointly in matters of peace and war answers to all requirements, theoretical and practical.

We can easily see now the chief source of the erroneous views generally prevailing about the legal status of Hungary. Our country usually appears in joint international action with Austria, she has a common representation with her; these facts are apt, by themselves, to spread a false impression, which could be prevented only if the forms of such joint action and common representation would clearly indicate, as they ought to do, the two sovereignties which, though acting in conjunction, are possessed each of their own personality.

Unhappily this is not the case. In former times the unification of its domains (Hungary included) into one empire has been the constant aim of the dynasty. That aim could never be obtained, owing to the firmness with which our forefathers insisted on their independence; but wherever they failed to keep a close watch, wherever prerogative could escape their control and find an opening, some fragmentary appearance of such an unified empire was called into existence. This could be achieved with the greatest ease in foreign affairs, the administration of which was almost entirely left to the king's discretion, and to some extent in army questions, where much debatable ground existed, and still exists, between prerogative and the rights of parliament. Of these opportunities the dynasty availed itself to the largest extent; while forced to reckon with the idea of Hungarian independence at home, it gave an entirely pan-Austrian character to diplomacy and to all foreign action. That lasted for two centuries at least, and fixed the impressions of foreign opinion in a direction which can be modified only through impressions of an opposite kind working on her for a considerable time. Unhappily, not even now can we point to a complete concord between what alls in the eyes of foreigners and what the relations

between Hungary and Austria legally are. A wholesale reform of those misleading forms in foreign (and to some extent military) matters has not yet been effected, though it has begun and will no doubt be completed in a time the length of which depends on the degree of forbearance with which the nation thinks fit to tolerate these last comparatively trifling but obstinate remanents of bad times. Why there should be such remanents at all, which can do no possible good to any one or to any cause, but only serve to irritate and to prevent the growth of perfect confidence and harmony, it is not my business to inquire here, where public law and not politics is my object.

But anxious as I am to keep to that distinction. I must still conclude with an allusion at least to the political side of my question. I should not like to be misunderstood. My strong insistance, my whole country's strong insistance, on her national independence, does not in the least imply a will or a wish to break away from Austria. We mean to keep faith to the reigning dynasty; no nation in its dominions is more absolutely reliable in that respect; we mean loyally to fulfill our compact of mutual defense with Austria; in a word, what our forefathers agreed to as being obligations freely accepted by Hungary, we mean to adhere to, as honest men should. All we want is that equal faith should be kept to us, that those equally binding enactments of the Pragmatic Sanction, which make Hungary secure of her independence as a sovereign nation, as a kingdom, *nulli alio regno vel populo subditum,* as the law of 1791 puts it, should be fulfilled with equal loyalty.

To such complete national existence we have as good a right as any nation on earth, not on grounds of formal legality only, but because we are conscious of having creditably fulfilled our mission as a bulwark of western civilization and of liberty. We don't see that this mission is ended, nor do we see how it could be fulfilled, should

that organic force of our peculiar national mentality and constitution be missing, should that force which stands unshaken after trials before which stronger empires have fallen into dust, give way to artifical combinations and mechanical contrivances.

We are then only faithful to the supreme law of our destinies when upholding the banner of national independence with unflinching firmness of resolve.